

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

**STATE OF OKLAHOMA, ex rel., et al,
PLAINTIFF,**

V.

**TYSON FOODS, INC. et al,
DEFENDANTS AND
THIRD PARTY PLAINTIFFS,**

V.

**City of Tahlequah, et al,
THIRD PARTY DEFENDANTS,**

TUMBLING T BAR L.L.C.
10733 N. 569 Rd.
PROCTOR, OK 74457

No. 05-CV-0329-JOE-SAJ

ANSWER

ANSWER TO THIRD-PARTY COMPLAINT

Third party defendant Tumbling T Bar L.L.C., (the “Defendant”) in answer to Plaintiffs’ Third-Party Complaint (the “Complaint”), states the following:

ANSWER

1. Defendant denies the allegations in paragraphs 1-167 of the Complaint.
2. As to paragraph 168, Defendant admits it is an LLC under the laws of Oklahoma. Defendant is without sufficient information to admit or deny the allegations of ownership and operation of property described, and therefore, those allegations are denied.
3. Defendant denies the remainder of the allegations in paragraph 168.
4. Defendant denies the allegations in paragraphs 169-221.

AFFIRMATIVE DEFENSES

1. To the extent that Defendant owns property within the Illinois River Watershed (“IRW”), the alleged actions of Defendant do not constitute natural resource damage under 42 USC § 9607(f) (“CERCLA”).

2. To the extent that Defendant conducts any activities alleged in paragraph 168 of the Complaint, Defendant states that such conduct is lawful, prudent, officially sanctioned by the Legislature of the State of Oklahoma, is not conducted in excess of agronomic need, and is consistent with good agricultural practices.

3. The Third Party Plaintiffs are guilty of comparative negligence of such a degree as to reduce or bar recovery from the Defendant.

4. The injuries of the Third Party Plaintiffs, if any, occurred without negligence or any other unlawful act or omission on the part of the Defendant.

5. The damages of the Third Party Plaintiffs, if any, were not proximately, or directly, caused by any action on the part of the Defendant.

6. The damages of the Third Party Plaintiffs, if any, were caused by the sole negligence of the Third Party Plaintiffs.

7. The damages of the Third Party Plaintiffs, if any, were proximately, or directly, caused by a third party over which Defendant has no control or supervision.

8. The Third Party Plaintiffs voluntarily assumed the risk for a known danger and are not entitled to a recovery in this action.

9. The injuries of the Third Party Plaintiffs, if any, were due to conditions beyond the control of the Defendant.

10. The claims of the Third Party Plaintiffs are barred by the doctrine of laches.

11. Insufficiency of Process.

12. Insufficiency of Service of Process.

13. Third Party Plaintiffs fail to state a claim upon which relief can be granted.

14. Third Party Plaintiffs' claims are barred by the statute of limitations.

15. Third Party Plaintiffs' claims are barred by the equitable doctrine of unclean hands.

16. Any other matter that may constitute an affirmative defense.

WHEREFORE, Third Party Defendant, Tumbling T Bar L.L.C., prays that Third Party Plaintiffs take nothing by way of the Complaint, that Defendant be awarded reasonable attorney's fees and costs and such other relief as the Court deems just and equitable.

COUNTERCLAIMS

Due to the complex nature of the litigation and likelihood of extensive discovery, Third Party Defendant reserves the right to add counter claims as the above-referenced matter progresses.

Respectfully Submitted,

s/ Angela D. Cotner
Angela D. Cotner, OBA #19073
505 Gray Fox Run
Edmond, Oklahoma 73003
(405) 715-3710
Attorney for Tumbling T Bar L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of April, 2006, I electronically transmitted the attached document to the Clerk of the Court using the ECF System for filing. Based on the electronic records currently on file, the Clerk of the Court will transmit a Notice of Electronic Filing to the following ECF registrants:

Jo Nan Allen
Frederick C Baker
Tim Keith Baker
Vicki Bronson
Paula M Buchwald
Louis Werner Bullock
Angela Diane Cotner
W A Drew Edmondson
Delmar R Ehrich
John R Elrod
Bruce Wayne Freeman
Ronnie Jack Freeman
Richard T Garren
Dorothy Sharon Gentry
Robert W George
Tony Michael Graham
James Martin Graves
Thomas James Grever
Jennifer Stockton Griffin
John Trevor Hammons

Michael Todd Hembree
Theresa Noble Hill
Philip D Hixon
Mark D Hopson
Kelly S Hunter Burch
Stephen L Jantzen
Bruce Jones
Jay Thomas Jorgensen
Raymond Thomas Lay
Nicole Marie Longwell
Linda C Martin
Archer Scott McDaniel
Robert Park Medearis , Jr
James Randall Miller
Robert Allen Nance
George W Owens
David Phillip Page
Marcus N Ratcliff
Robert Paul Redemann
Melvin David Riggs

Randall Eugene Rose
Patrick Michael Ryan
Robert E Sanders
David Charles Senger
Colin Hampton Tucker
John H Tucker
Kenneth Edward Wagner
Elizabeth C Ward
Sharon K Weaver
Timothy K Webster
Gary V Weeks
Adam Scott Weintraub
Terry Wayen West
Edwin Stephen Williams
Douglas Allen Wilson
J Ron Wright
Lawrence W Zeringue

I hereby certify that on this 9th day of April, 2006, I transmitted the a true and correct copy of Corporate Disclosure to the following who are not registered with the ECF System by depositing the same into the United States Mail with proper postage prepaid thereon:

John E Adair
RT 2 BOX 1160
STILLWELL, OK 74960

Virginia W Adair
RT 2 BOX 1160
STILWELL, OK 74960

Jim Bagby
RR 2, Box 1711
Westville, OK 74965

Thomas C Green
Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

John E. and Virginia W. Adair Family Trust
RT 2 BOX 1160
STILWELL, OK 74960

William H Narwold
Motley Rice LLC (Hartford)
20 CHURCH ST 17TH FLR
HARTFORD, CT 06103

C Miles Tolbert
Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118